

Act 1.338 of 7 September 2007 on financial activities

**ALBERT II
BY THE GRACE OF GOD
SOVEREIGN PRINCE OF MONACO**

Have sanctioned and sanction the following Act, which the National Council adopted at its session on 4 September 2007.

ARTICLE 1

The activities listed below, carried on as a usual business or in a professional capacity, shall be subject to the provisions of this Act:

- 1) the management for third parties of portfolios of transferable securities or financial futures;
- 2) the management of mutual funds or other collective investment schemes under Monacan law;
- 3) the receipt and transmission for third parties of orders on the financial markets relating to transferable securities or financial futures;
- 4) the provision of advice and assistance in the areas referred to in figures 1 to 3;
- 5) the execution of orders for third parties;
- 6) the management of foreign collective investment schemes;
- 7) trading for own account.

The provisions of this Act do not apply to the activities set forth at figures 1 to 6 when they are engaged in by undertakings for the sole benefit of the legal entities that control them, directly or indirectly, or of the legal entities that they control.

**SECTION I
AUTHORISATION PROCEDURE**

ARTICLE 2

A licence issued by the Financial Activities Supervisory Commission instituted at Article 10 is required in order to engage in the activities mentioned in the preceding article.

ARTICLE 3

Such a licence may be issued only to:

- 1) Monacan *sociétés anonymes* (public limited companies);
- 2) credit institutions having their headquarters in a foreign country and a branch in the Principality.

ARTICLE 4

A licence may be issued for all or some of the activities listed at Article 1.

A licence to engage in the activity mentioned at Article 1(2) can additionally authorise only the activities referred to at Article 1(1), (4) and (6).

ARTICLE 5

To obtain a licence, the companies referred to at Article 3 must furnish evidence, to the satisfaction of the Financial Activities Supervisory Commission, of:

- 1) sufficient financial guarantees assessed with regard to the quality of the persons who, directly or indirectly, provide the capital;
- 2) the integrity, experience and professional skills of their senior managers;
- 3) sufficient technical resources and staff to carry out the activities referred to in the licence.

ARTICLE 6

Monacan *sociétés anonymes* (public limited companies) that are not credit institutions must also furnish evidence of:

- 1) an exclusive corporate purpose covering all or some of the activities mentioned in Article 1;
- 2) a minimum amount of share capital, determined by Sovereign Order, fully paid-up in cash.

ARTICLE 7

The composition and contents of the application for authorisation shall be defined by Sovereign Order.

The Financial Activities Supervisory Commission shall inform the company concerned, within six months of receiving a complete application for authorisation, of its decision with regard to such application.

ARTICLE 8

Any change to one or more material items of the application mentioned in the preceding paragraph occurring after a licence has been issued must be notified promptly to the Financial Activities Supervisory Commission, which may instruct the company to apply for a new licence or to take all measures made necessary by such changes within such time limit as it may decide.

ARTICLE 9

A notice that a licence has been issued shall be published in the Journal de Monaco.

SECTION II
THE FINANCIAL ACTIVITIES SUPERVISORY COMMISSION

ARTICLE 10

A Financial Activities Supervisory Commission is instituted, hereinafter referred to as the "Commission", whose remit shall be to ensure application of this Act and its implementing regulations.

In order to accomplish its task, the Commission, in all independence and under the authority of its President, shall:

- 1) decide on applications for authorisation after processing them and issue licences within the time limit set in Article 7;
- 2) ensure that transactions carried out by authorised companies comply with the prevailing laws and regulations;
- 3) receive and process complaints submitted to it by any person having a proven interest;
- 4) carry out controls under the conditions set forth in this Section in order, where relevant, to cause any ascertained irregularities to cease or to dispel their effects in accordance with Article 19;
- 5) to order administrative sanctions under the conditions set forth in Section IV.

In order to accomplish its task, the Commission may conclude agreements organising relations with foreign authorities that exercise similar powers.

ARTICLE 11

The Commission shall comprise:

- 1) the President of the Monacan Association of Financial Activities or his representative;
- 2) the President of the *Ordre des Experts-Comptables* (Order of Chartered Accountants) or his representative;
- 3) at least seven members chosen for their competence and appointed by Sovereign Order for a renewable five-year term.

The Sovereign Order appointing them shall also appoint the Chairman and Vice-Chairman of the Commission.

The position of President of the Monacan Association of Financial Activities and President of the Order of Chartered Accountants is incompatible with that of Chairman of the Commission.

The Commission shall have a Bureau comprising the Chairman, the Vice-Chairman and one member of the Commission elected each year by the members.

The Commission's operating rules shall be determined by Sovereign Order.

ARTICLE 12

In strict compliance with its remit, and without professional secrecy being invoked as grounds for non-disclosure except by notaries and other representatives of the law, the Commission may:

- 1) request communication of all documents disseminated by authorised companies and all items it may deem relevant, including in particular all agreements, books, accounting documents, minute books and all documents and information relating to the final beneficiary of transactions performed by such companies whose identity they must know pursuant to Article 10 of Act 1.162 of 7 July 1993 as amended;
- 2) elicit information relevant to the conduct of its assignment from third parties who have carried out work or transactions on behalf of authorised companies;
- 3) call and hear the senior managers or representatives of authorised companies and all persons liable to provide information concerning matters referred to it; persons attending a hearing may be assisted by counsel;
- 4) gain access to all business premises of companies or branches under its supervision in order to conduct investigations.

ARTICLE 13

In order for the Commission to carry out its assignment, its Chairman may, on a decision of the Bureau, authorise one or more persons to conduct an investigation.

On a favourable opinion from the Bureau, he may appoint an expert to assist persons authorised under the terms of the preceding paragraph. The expert must also be authorised.

To that end, such persons shall be issued with an order of mission in their name, drawn up and signed by the Chairman and stating that the bearer has been duly authorised, to be presented upon request to the authorities or persons concerned.

Authorised persons may gain access to all business premises and perform all documentary or on-site investigations they may deem necessary. To that end, they may request all business documents and make copies of them if necessary, and elicit all relevant information or evidence from any person, on-site or by inviting them to a hearing. Persons attending a hearing may be attended by counsel of their choice.

Visits to premises and on-site investigations may take place only between 6.00 a.m. and 9.00 p.m. in the presence of the senior managers or representatives of the authorised company or, failing that, a senior law-enforcement officer requisitioned by the authorised persons.

Where authorised persons, in performing the assignment entrusted to them by the Chairman of the Commission, find evidence liable to constitute a criminal offence, they shall promptly inform the Chairman of the Commission who, on a decision of the Bureau, shall inform the Public Prosecutor.

ARTICLE 14

The members of the Commission and persons authorised under the terms of the preceding Article shall be bound by a professional secrecy obligation under the conditions set forth at Article 308 of the Penal Code. They shall further be bound by an obligation of discretion with regard to all matters concerning information or facts that come to their attention in the performance of their duties.

Professional secrecy and the obligation of discretion may not be invoked against judicial authorities acting in the context of criminal proceedings.

ARTICLE 15

No proceedings on the grounds of Article 308 of the Penal Code may be initiated against a financial organisation, its senior managers or employees or any other person who, in accordance

with the provisions of Articles 12 and 13, has transmitted information, provided documents or attended a hearing in good faith.

No action in civil liability may be taken and no professional sanction ordered against such persons where they have acted under the conditions set forth in the preceding paragraph.

These provisions apply even where the criminal nature of the evidence on which the transmission of information, provision of documents or hearing was based is unproven or where such evidence results in termination of proceedings without trial, discharge or acquittal.

ARTICLE 16

For the purposes of supervision on a consolidated basis of the parent companies of authorised companies, the Commission may, at the request of a foreign supervisory authority, provide it with information about such companies; it may for the same purposes perform or commission investigations in accordance with the provisions of Articles 12 and 13.

The Commission may also perform or commission such investigations at the request of foreign authorities competent to supervise financial markets under the terms of a cooperation and exchange of information agreement concluded between it and such authorities.

The Bureau may, where appropriate, authorise a representative of the foreign authority to attend hearings conducted under the terms of the preceding two paragraphs.

The professional secrecy obligation and obligation of discretion set forth at Article 14 shall not prevent the Commission from furnishing to foreign authorities that have concluded an agreement with it information in its possession or that it elicits at their request.

However, the transmission of information to a foreign supervisory authority or assistance requested by a foreign financial markets supervisory authority with which a cooperation and exchange of information agreement has been concluded may be refused if acceding to the request is liable to jeopardise Monaco's sovereignty, security, essential economic interests or public policy or if any criminal proceedings have already commenced in Monaco on the basis of the same evidence and against the same persons, or if such persons have already been sanctioned by an administrative decision or court judgment for the same facts.

ARTICLE 17

Information may be provided to the foreign authorities referred to in the preceding paragraph with which a cooperation and exchange of information agreement has been concluded only if the arrangement is reciprocal and on condition that the authority concerned is bound by a professional secrecy obligation offering the same guarantees as in the Principality. Such information may not be used for any purpose other than that for which it was provided.

ARTICLE 18

The Financial Activities Supervisory Commission succeeds the Supervisory Commission for Portfolio Management and Similar Stock Market Activities and the UCITS Supervisory Commission in their rights and obligations.

ARTICLE 19

If the Commission finds that provisions of the laws and regulations for whose application it has supervisory responsibility are not respected, it shall serve notice on the authorised company concerned to cause such irregularities to cease or to dispel their effects within such time limit as it may decide.

If no remedial action has been taken on expiry of the given time limit, the Commission's Chairman may, on a decision of the officers, ask the President of the Court of First Instance in expedited proceedings to order the authorised company to comply with the notice. The President may impose a daily fine for failure to comply and, if petitioned, may take all necessary measures to safeguard the interests of the authorised company's clients.

ARTICLE 20

In matters relating to the Commission's activities, the State shall be represented in justice by the Commission's Chairman.

Copies of procedural instruments concerning the Commission shall be left in its offices.

SECTION III CONDITIONS FOR THE PURSUIT OF BUSINESS BY AUTHORISED COMPANIES

ARTICLE 21

All authorised companies must join the Monacan Association of Financial Activities.

ARTICLE 22

Authorised companies must be able to furnish evidence at each year-end of corporate assets in an amount at least equal to that of the minimum capital referred to at Article 6 (2).

ARTICLE 23

Authorised companies must comply with the prudential rules and rules of good conduct defined by Sovereign Order.

ARTICLE 24

Authorised companies may not receive deposits of funds, securities or precious metals from their clients or perform transactions between a client account and their own account or transactions directly between client accounts.

Without prejudice to the provisions of the following article and the last two paragraphs of Article 26, the prohibition set forth in the preceding paragraph shall not prevent authorised companies from receiving a mandate to make deposits or withdrawals of securities or funds on clients' behalf, provided that such clients issue a special power of attorney in writing, renewable for each transaction.

ARTICLE 25

Authorised companies may not receive mandates from clients other than those relating to the activities mentioned in the licence issued under the terms of Article 2 or Article 8.

ARTICLE 26

Mandates given by clients to companies authorised to engage in the business referred to at Article 1 (1) shall be the subject of written successive performance contracts, signed by the parties, that comply with the rules defined by Sovereign Order.

Authorised companies must pursue their portfolio management business for the sole benefit of clients in accordance with the terms of the above-mentioned mandates.

They may not use such mandates for any purpose other than those for which they have been issued.

ARTICLE 27

Clients shall deposit the funds or securities to be managed with a credit institution which will have custody of the securities, keep the cash and securities accounts and keep accounts of transactions on the various authorised markets.

The Commission may require the depositary credit institution to be located in the Principality.

The depositary credit institution shall not be responsible for negotiations carried out on its clients' behalf by the authorised management company.

It may not accept deposits or withdrawals of funds or securities on the authorised company's initiative unless the client has issued a special power of attorney in writing, renewable for each transaction.

The parties must sign a written agreement in order to open an account.

ARTICLE 28

All authorised companies are required to provide the Commission with documents relating to their activities and intended for clients or the public before publishing or circulating them.

If the Commission finds inaccuracies or omissions in publications provided for by the laws or regulations or in the documents referred to in the preceding paragraph, it may prohibit dissemination of the publications or documents concerned or order the necessary changes to be made to them.

ARTICLE 29

Canvassing at a person's domicile or residence or workplace or in public places except for the premises of authorised companies for the purposes of offering the services of an authorised company, orally or in writing, by telephone or by means of telematics or information technology, is prohibited.

However, the Commission may authorise such canvassing under terms and conditions contained in the licence.

Mentioning the licence referred to at Article 2 for advertising purposes, especially if it is presented as constituting an endorsement of management quality, is strictly prohibited.

ARTICLE 30

Within six months following the end of the financial year, authorised companies shall send the Commission an annual report, a balance sheet and a certificate drawn up in accordance with rules determined by Sovereign Order.

ARTICLE 31

Authorised companies that are Monacan *sociétés anonymes* must appoint, for three consecutive financial years, two statutory auditors chosen from among the chartered accountants in the list of members of the Order provided for at Article 20 (3) of Act 1.231 of 12 July 2000.

The statutory auditors shall draw up a certificate relating to the annual report referred to in the preceding Article before it is transmitted to the Commission, in accordance with procedures defined by Sovereign Order. For the purpose, companies that conduct their business as

branches of foreign companies shall appoint a statutory auditor chosen from among the professionals referred to in the preceding paragraph.

Without incurring liability except in the case provided for at Article 307 of the Penal Code, statutory auditors shall inform the Public Prosecutor of any criminal acts that come to their attention in the conduct of their assignment.

They shall also advise the Commission if, in the conduct of their assignment, they find that the company's activity does not comply with the activity for which the licence referred to at Article 2 and Article 8 was issued.

ARTICLE 32

The obligations imposed on authorised companies by Articles 24, 25, 28, 29 and 41 do not apply to credit institutions.

ARTICLE 33

Any individual who, in any capacity, takes part in the administration, direction or management of an authorised company or who is employed by an authorised company is bound by a professional secrecy obligation under the conditions and subject to the penalties set forth at Article 308 of the Penal Code.

Professional secrecy may not be invoked against judicial authorities acting in the context of criminal proceedings

Authorised companies must, where relevant, provide their parent companies with the information necessary for supervision on a consolidated basis by a foreign supervisory authority if they are subject to such a requirement.

Such information may not be transmitted to third parties, except the parent company supervisory authority, without the prior consent of the authorised company concerned.

SECTION IV ADMINISTRATIVE SANCTIONS AND SAFEGUARDS

ARTICLE 34

Without prejudice to criminal penalties, if the Commission finds that an authorised company has failed to comply with the obligations set forth in this Act and its implementing regulations, it may issue a warning or a reprimand.

It may also order temporary suspension of the licence for a period not exceeding six months or final revocation if the authorised company:

- 1) has not engaged in any notable activity for a period of twelve months without good reason or has expressly renounced its licence;
- 2) no longer has sufficient resources or staff to pursue the activities to which the licence relates;
- 3) has obtained its licence by means of false statements or by any other unlawful means;
- 4) no longer fulfils the conditions on the basis of which the licence was issued;
- 5) has materially and repeatedly failed to comply with the provisions of this Act or its implementing regulations;

6) is liable by pursuing its business to jeopardise its clients' interests.

ARTICLE 35

A procedure liable to culminate in the imposition of administrative sanctions may not be initiated on the basis of facts dating back more than three years if no action to investigate, ascertain or sanction them has been taken during that time.

ARTICLE 36

If the Commission decides to initiate a procedure liable to culminate in the imposition of administrative sanctions, it shall advise the person concerned thereof by registered letter with acknowledgment of receipt.

The letter shall set out the grounds on which the sanction is envisaged and shall also inform the interested party that he:

- has two months as of the date on which the letter is sent to transmit his written observations to the Bureau;
- may approach the Commission in order to consult items of evidence and take copies;
- may be attended or represented by any counsel of his choice.

The file shall include the evidence on which the Commission has based its decision to initiate the procedure.

ARTICLE 37

The Bureau shall appoint a rapporteur within the Commission. The person concerned may be heard by the rapporteur at his request or if he deems it appropriate. The rapporteur may also call any person whom he considers it would be helpful to hear.

The rapporteur shall draw up a report of his investigations and inspections and their outcome. The report shall be provided to the officers and to the person concerned by registered letter with acknowledgment of receipt.

ARTICLE 38

In the light of the report, and if it considers that the procedure should continue, the Bureau shall call the person concerned to a forthcoming Commission hearing by registered letter with acknowledgment of receipt. The date of the hearing may not be set at fewer than thirty clear days from the date on which the invitation to attend is sent. The letter shall state that the person concerned has twenty-one clear days in which to submit his observations on the report in writing.

ARTICLE 39

The rapporteur shall present the case at the hearing. The Bureau and the person concerned may then call any person whom they consider it would be helpful to hear.

The person concerned and his counsel, if any, shall be heard. If either one fails to attend the hearing despite having been duly called to attend in accordance with the terms of the preceding Article, a note to that effect shall be made in the minutes provided for in the paragraph below.

On completion of the hearing, the Commission shall deliberate without the presence of the rapporteur, the person concerned and his counsel. The Chairman shall have the casting vote in the event of a tie.

If the Chairman is absent or indisposed, he shall be replaced by the Vice-Chairman, who shall

then have the casting vote in the event of a tie.

A representative of the Budget and Treasury Directorate shall act as secretary for the hearing and the deliberation and shall draw up a minute.

The minute shall state the name of the members of the Commission taking part in the deliberation, briefly recount the content of the statements and discussions at the hearing and state the Commission's decision. If the Commission decides to temporarily suspend or revoke its licence, the minute shall state the time limit and conditions of implementation of the sanction. The minute shall be signed by the Chairman of the Commission, the rapporteur and the secretary of the meeting.

It shall be notified to the person concerned by registered letter with acknowledgment of receipt.

Decisions ordering the suspension or revocation of a licence shall be published in the Journal de Monaco.

ARTICLE 40

The provisions of Articles 35 to 39 do not apply to a decision to revoke or temporarily suspend a licence when a company has expressly renounced its licence pursuant to Article 34 (1).

ARTICLE 41

A Monacan company whose licence has been revoked must be dissolved according to the procedure and within the time limit set forth at Articles 5 to 7 of Act 767 of 8 July 1964.

Should that not be the case, the Minister of State may ask the President of the Court of First Instance to order the company to be dissolved and to appoint an administrator to carry out the liquidation.

ARTICLE 42

Without prejudice to any administrative sanctions that may be ordered under the provisions of this section, the Bureau may, in an emergency and in the event of failure to comply with one or more obligations under this Act, provisionally suspend the licence by a substantiated decision for a period not exceeding three months.

The President of the Court of First Instance, ruling in expedited procedure, may order the measure imposed under the terms of the preceding paragraph to be lifted.

SECTION V CRIMINAL PENALTIES

ARTICLE 43.

Any person carrying on or attempting to carry on in his own name or in any capacity whatsoever all or some of the activities defined in Article 1 without having obtained one of the necessary licences pursuant to Article 2 or Article 8 shall be liable to one to five years' imprisonment and the fine provided for at Article 26.4 of the Penal code, the maximum amount of which may be raised to the amount of any profit made, or one only of those two penalties.

ARTICLE 44.

The following shall be liable to the penalties set forth at the preceding Article or one only of those two penalties:

1) senior managers of authorised companies whose activities do not comply with the exclusive

corporate purpose referred to at Article 6 (1) or, without prejudice to other licences, exceed the limits determined by the licence issued pursuant to Articles 2 or 8;

2) senior managers of authorised companies that carry on all or some of the activities defined at Article 1 after the licence held by such companies pursuant to Article 2 or Article 8 has been entirely or partially revoked or temporarily suspended or after the court has prohibited pursuit of the activity.

ARTICLE 45

The following shall be liable to the penalties set forth at Article 43 or one only of those two penalties:

1) senior managers of authorised companies that, in the absence of the special power of attorney referred to at Article 24, receive from clients one or more deposits or carry out one or more transactions prohibited by the above-mentioned Article;

2) senior managers of authorised companies that receive one or more mandates from clients other than those provided for at Articles 25 and 26;

3) senior managers of authorised companies that do not seek the sole interest of their customers or that use their mandates for purposes other than those set forth at Article 25 and 26;

4) senior managers of credit institutions holding securities or cash for management that accept one or more deposits or withdrawals prohibited by Article 27 without a special power of attorney.

ARTICLE 46

The following shall be liable to one to five years' imprisonment and the fine provided for at Article 26.4 of the Penal code or one only of those two penalties:

1) senior managers of authorised companies who hinder the auditors' verifications or audits or refuse to furnish them with items relevant to the conduct of their assignment;

2) senior managers of authorised companies who refuse to furnish the Commission or the persons it authorises pursuant to Article 13 with items relevant to performance of their assignment;

3) senior managers of authorised companies who fail to communicate the documents referred to Article 28 or who publish or cause to be published, disseminate or cause to be disseminated documents in disregard of a decision ordering changes to be made to them or prohibiting them;

4) senior managers of authorised companies who, in breach of the provisions of Article 29, canvass or cause others to canvass for business, or cause prohibited advertising material to be published.

ARTICLE 47

Senior managers of an authorised company who fail to organise the appointment of the statutory auditors provided for at Article 31 shall be liable to six months' to two years' imprisonment and the fine provided for at Article 26.3 of the Penal code or one only of those two penalties.

ARTICLE 48

The following shall be liable to the fine provided for at Article 26.3 of the Penal code:

1) senior managers of authorised companies who are called to a hearing by the Commission or by persons authorised by the Commission pursuant to Article 13 and fail to attend such hearing

without good cause;

2) senior managers of an authorised company who fail to transmit to the Minister of State the documents referred to at Articles 8 and 30 ;

3) any person other than those referred to at Article 46.1 who hinders the auditors' verifications or audits or refuses to furnish them with items relevant to the conduct of their assignment.

ARTICLE 49

It is an offence punishable by two years' imprisonment and the fine provided for at Article 26.4 of the Penal Code, the amount of which may be increased to ten times the amount of any profit made and may not be less than such profit, for the senior managers of a company and for persons who, in the exercise of their profession or duties, are privy to inside information about the prospects or situation of an issuer whose securities are traded on a regulated market or about the prospects of a transferable security or financial future admitted to trading on a regulated market, to carry out or to knowingly allow to be carried out, either directly or through an intermediary, one or more transactions before the information is made public.

It is an offence punishable by six months' imprisonment and the fine provided for at Article 26.3 of the Penal Code for any person who, in the exercise of their profession or duties, is privy to inside information about the prospects or situation of an issuer whose securities are traded on a regulated market or about the prospects of a transferable security or financial future admitted to trading on a regulated market, to communicate such information to a third party outside the normal framework of their profession or duties.

It is an offence punishable by the penalties provided for in the first paragraph for any person to knowingly spread in the public domain, by any means, false or misleading information about the prospects or situation of an issuer whose securities are traded on a regulated market or on the prospects for a transferable security or financial future admitted to trading on a regulated market, where such information is liable to have an effect on the price.

ARTICLE 50

A court hearing proceedings relating to offences under this Act that involve the senior managers of an authorised company may seek the opinion of the Commission at any stage in the proceedings.

The court may decide that an authorised company is jointly liable with its senior managers for the payment of fines imposed on them. It may also prohibit the authorised company from continuing to pursue its business and order its dissolution.

ARTICLE 51

Without prejudice to the provisions of Article 40 of the Penal Code, if an offence referred to at Articles 43 to 47 is repeated, the tariff of the fines provided for in those articles will be doubled.

SECTION VI FINAL PROVISIONS

ARTICLE 52

Companies authorised at the date on which this Act is published shall have one year in which to

comply with its provisions.

ARTICLE 53

Act 1.194 of 9 July 1997 as amended and all provisions contrary to this Act are repealed.

In all legislative and regulatory texts in force, references to the provisions of Act 1.194 of 9 July 1997 shall be replaced, where appropriate, by references to the provisions of this Act.

This Act shall be promulgated as a law of the State.

Done in Our Palace at Monaco on the seventh of September two thousand and seven.

ALBER

By the Prince,
The Secretary of State:
R. NOVELLA.